IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 1780 OF 1986

National Textile Corpn.,
(New Delhi) Ltd. & anr. ... Plaintiffs

V/s

M/s. Everest Entreprenuers, Bombay. ... Defendants

Ms. Usha Vishwanath i/by Pandya & Poonawala for the plaintiffs.

None present for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 16TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed the suit against the defendants for recovery of the amount of Rs.80,218/- together with further interest on the principal amount of Rs.54,165.95 at the rate of 21% p.a. from the date of filing of the suit till payment or realization.

2. In the year 1983, an Ordinance called the Textile Undertakings (Taking Over of Management) Ordinance 1983 was promulgated and on and from the appointed date viz. 18th October, 1983 the management of thirteen textile undertakings including Shree Madhusudan Mills (U.C.),

was taken over and the said undertakings came to be vested in Union of India. Under the said Ordinance the Union of India was authorised to appoint Custodian for management of the textile undertakings and accordingly National Textile Corporation (New Delhi) was appointed as Custodian and further by an order dated 19.10.1983 issued under the said Ordinance, the National Textile Corporation (South Maharashtra) Ltd. was appointed as Additional Custodian of the said textile undertakings. On or about 26th December, 1983 the Textile Undertaking (Taking Over of Management) Act, 1983 was enacted, pursuant to which the management of the textile undertakings vested in the Union of India and all acts done under the Ordinance stood ratified.

It is further submitted that, after going through and checking up records which are available with plaintiff No.2 and which are submitted by Shree Madhusudan Mills (U.C.) to plaintiff No.2, there were dealings between Shree Madhusudan Mills (U.C.) and the defendants whereby Shree Madhusudan Mills (U.C.) the textile undertaking used to deliver cloth materials to the defendants. The defendants were at the material time acting as one of the dealers of cotton textile manufactured by plaintiffs. The goods were delivered and supplied to

the defendants as per their order and the defendants have accepted the goods without raising any objection as to quantity, quality and rates. Shree Madhusudan Mills (U.C.) had supplied cloth materials to the defendants from time to time. As per the documents maintained by the said Shree Madhusudan Mills (U.C.), a sum of Rs.3,02,856.72 was due and payable by the defendants to the plaintiffs out of which a part payment of Rs.2,48,690.77 was paid by the defendants to the plaintiffs leaving balance of Rs.54,165.95.

Therefore, Shree Madhusudan Mills (U.C.) addressed a letter to the defendants dated 28.12.1983 demanding outstanding amount of Rs.54,165.95 but the defendants denied to make any payment and hence the suit is filed.

3. The defendants filed their written statement raising various contentions and submitted that they were not liable to pay any dues to the plaintiffs and hence they sought dismissal of the suit.

4. On the basis of the pleadings available of the parties, issues are settled. The settled issues and my findings thereon are as under :-

(1) Whether the plaintiffs prove that a sum of Rs.80,218/- together with interest on the sum of Rs.54,165.95 ps. at the rate of 21% per annum from 26.2.1986, is payable by the defendants to the plaintiffs ?

(2) Whether the defendants prove that the plaint disclosed no cause of action ?

(3) Whether the defendants prove that the assets and liabilities of the Kohinoor Mills are not taken over by the Ordinance and that the suit is not maintainable ?

(4) What reliefs ?

(5) What order and decree ?

My findings on the above issues are :-

Issue No.1 :- Affirmative.
Issue No.2 :- Negative.
Issue No.3 :- Negative.
Issue Nos. 4 & 5 :- As per final order.

5. At the outset, it may be noted that though the defendants appeared and filed their written statement initially in this suit, they remained absent on the date of hearing and, therefore, the suit proceeded ex-parte against them. On the other hand, the plaintiffs' witness entered the witness box and proved the contents of the affidavit of evidence as well as the contents of the compilation of documents. He has also proved the claim made out in the plaint. The plaintiffs' evidence has gone unchallenged on record and, therefore, I have no hesitation to hold that the plaintiffs' suit deserves to be decreed. Hence the following order :-

O R D E R

The suit stands decreed with costs.

The defendants shall pay an amount of Rs.80,218/- to the plaintiffs together with the interest at the rate of 12% p.a. on the principal amount of Rs.54,165.95 from the date of filing of the suit till the payment or realization.

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